



ALAMEDA COUNTY
CONGESTION MANAGEMENT AGENCY

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December 26, 2005

REQUEST FOR PROPOSALS
DESIGN SERVICES
FOR THE
ARDENWOOD PARK AND RIDE LOT PROJECT
IN
ALAMEDA COUNTY

Dear Consultant:

The Alameda County Congestion Management Agency (ACCMA) is currently seeking to retain a qualified consultant firm to perform engineering design services as necessary to complete the construction contract documents (PS&E) for the Ardenwood Park and Ride Lot project.

The Request for Proposals (RFP), available on the ACCMA website, describes the project, summarizes its current status, presents the requirements of the proposal, and outlines the criteria that will be used to evaluate the proposals. **A pre-proposal meeting will be held on Tuesday, January 10, 2006 at 1:00 pm in the ACCMA offices located at 1333 Broadway, Suite 220, Oakland, CA 94612.**

To be considered, ten (10) copies of the proposal must be received at the ACCMA offices **no later than 3:00 p.m. on Monday, February 6, 2006.** Faxed or e-mailed proposals will not be accepted. Interviews, if necessary, are tentatively scheduled for the week of February 20-24, 2006.

We look forward to receiving a proposal from your firm. If you have any questions regarding this project, please call me at (510) 836-2560.

Sincerely,

Original signed by

Stefan Garcia, P.E.
Project Manager

REQUEST FOR PROPOSALS
For
Design Services for
Ardenwood Park and Ride Lot Project
in Alameda County

RFP A05-014

Issued by:

Alameda County Congestion Management Agency

December 26, 2005

RESPONSES DUE:

3:00 PM (PST), Monday, February 6, 2006

Alameda County Congestion Management Agency
1333 Broadway, Suite 220
Oakland, CA 94612

TABLE OF CONTENTS

1.0	INTRODUCTION.....	2
2.0	IMPLEMENTATION OF ARDENWOOD PARK AND RIDE PROJECT... 2	2
2.1	Background.....	2
2.2	Project Description	3
2.3	Project Status	3
2.4	Project Schedule	4
3.0	SERVICES TO BE PROVIDED / SCOPE OF WORK.....	4
3.1	Stage 1 – Final Design (PS&E)	5
3.1.1	Project Management	5
3.1.2	Interim PS&E (65% Submittal)	6
3.1.3	Draft Final PS&E (95% Submittal)	6
3.1.4	Final PS&E	7
3.1.5	Right of Way Engineering	7
3.1.6	Additional Services.....	7
3.2	Stage 2 – Design Services during Construction (DSDC)	7
3.2.1	Project Management	8
3.2.2	Bidding Support Services	8
3.2.3	Construction Support Services.....	8
3.2.4	Additional Services.....	8
4.0	PROPOSAL SUBMITTAL REQUIREMENTS.....	10
4.1	Proposal	10
4.2	Transmittal Letter	10
4.3	Project Understanding.....	10
4.4	Approach and Management Plan.....	10
4.5	Qualifications and Experience	11
4.6	Staffing Plan.....	11
4.7	Work Plan and Schedule.....	11
4.8	Additional Relevant Information	11
4.9	References.....	11
4.10	Submittal of Proposals	11
5.0	SELECTION OF CONSULTANT.....	12
6.0	SELECTION PROCESS SCHEDULE.....	12
7.0	GENERAL CONDITIONS.....	13
8.0	ATTACHMENTS.....	14
8.1	Attachment A – Sample Contract	
8.2	Attachment B – Project Exhibit	
8.3	Attachment C – List of Firms That Received This RFP.....	

REQUEST FOR PROPOSALS
for
Design Services for
Ardenwood Park and Ride Lot Project
in Alameda County

1.0 INTRODUCTION

The Alameda County Congestion Management Agency (ACCMA) is responsible for planning, programming, and coordinating Federal, State, and Regional funds for transportation projects within Alameda County. Over the last few years, ACCMA has partnered with other state and local agencies and taken on additional responsibilities in the delivery of priority projects on and off the State Highway System. As part of this effort, ACCMA will be implementing the Ardenwood Park and Ride Lot Project in Alameda County.

2.0 IMPLEMENTATION OF ARDENWOOD PARK AND RIDE PROJECT

2.1 Background

There is traffic congestion along the various trans-Bay corridors, including the Route 84 corridor which provides a vital connection between southern Alameda County and north Santa Clara County. Congestion in the corridor is attributed to heavy westbound commuter traffic during weekday morning and eastbound traffic during weekday evening.

Alameda-Contra Costa Transportation District (AC Transit) operates various trans-Bay services to provide an alternative mode of transportation for commuters. As part of the construction of Route 84 in the 1980s, Caltrans constructed a park-and-ride lot at the Route 84-Ardenwood Boulevard Interchange to serve commuters using the AC Transit service. The service is heavily patronized and the parking lot has been operating at capacity.

In 2004, the voters in the Bay Area approved Regional Measure 2, which provides for a toll increase to fund transportation projects along trans-Bay corridors. The ACCMA and AC Transit jointly sponsored the Express Bus South Project, which includes multiple sub-projects to provide improvements to the trans-Bay services provided by AC Transit. One of the sub-projects is the construction of additional parking facility to serve the Route 84 corridor. At the same time, a piece of property adjacent to the existing Caltrans park-and-ride lot recently became available. ACCMA and AC Transit jointly decided to pursue the acquisition of the property to construct a park-and-ride lot to provide approximately parking for bicycles and 100 vehicles. ACCMA will be the implementation agency for the project. The project will be fully funded under the Regional Measure 2 program. The amount of funds available is fixed and will not escalate.

ACCMA currently intends to waive its rights, as a governmental entity, to be exempted from local planning and permitting requirements. Therefore, it is anticipated that the project will require approval from the City of Fremont, where the site is located. It is anticipated that the current property owner will re-develop the remainder of the site concurrently with the project.

It is the intent of both ACCMA and AC Transit that the project will include a “seamless” connection to the existing Caltrans park-and-ride lot. Therefore, the design of any modification to the existing Caltrans lots will require a Caltrans permit and approval. The completed project will be owned and operated by AC Transit. Caltrans has indicated that it is interested in transferring its lot to AC Transit but no firm commitment or schedule for the transfer is provided.

2.2 Project Description

The Ardenwood Park-and-Ride Project is located in the northwest quadrant of the Route 84/Ardenwood Boulevard Interchange in the City of Fremont. There is presently a combined mini-golf and go-cart facility on the site, which is bounded by Route 84, the Caltrans park-and-ride lot, Ardenwood Terrace and the Union Pacific Railroad tracks. The project site measures approximately 240 feet by 200 feet with an area of approximately 1 acre.

Construction of the project will require the removal of the existing above ground improvements. The site is in a marginal flood zone and it is proposed that the site be raised above the FEMA floodplain elevation. This will also eliminate the elevation difference with the Caltrans park-and-ride lot to provide for a connection between the two lots.

The proposed project will provide approximately 100 parking stalls as well as bicycle lockers. Lighting will be provided. There will be a pre-fabricated guard booth. Landscaping and irrigation will be included to meet the City’s requirements. An existing drainage system will be modified or replaced to comply with the City of Fremont’s NPDES requirements to improve quality of run-off. A plan showing the proposed project layout is shown in Attachment B. The final layout of the site may be revised in response to comments from the City of Fremont and to maximize the use of the remaining property.

The budget for the construction of the project, including ACCMA staff time, construction management, fees and permits etc is \$1.46 million (2006 Dollars).

2.3 Project Status

The environmental document was completed in August 2005. In October, the MTC approved a funding allocation for the design and right-of-way phases of the project. The ACCMA intends to undertake the design and right-of-way acquisition concurrently. Once these two activities are complete, the ACCMA will seek an allocation of funds from the RM2 program to complete construction of the project. The following preliminary engineering work deliverables have or will be completed by others, and will be provided by the ACCMA to the Design Consultant:

1. Base Mapping / APE Mapping
2. Aerial, Right-of-way and Topographical Survey
3. Completed Environmental Document (Categorical Exemption)
4. Preliminary design plans
5. Title Reports and CC&Rs of project site
6. As-built/Record Plans for Project Site and Caltrans Park-and-Ride Lot (incomplete)
7. Comments on the project from the City of Fremont

Additional Information:

1. The ACCMA is refining preliminary engineering, right-of-way requirements, and a cost estimate for the project.
2. AC Transit and ACCMA have executed an agreement on the implementation of the project.

2.4 Project Schedule

- | | |
|-------------------------------------|---------------------|
| • Complete PA & ED Phase | August/October 2005 |
| • Complete Right-of-way Acquisition | June 2006 |
| • Complete Final Design | August 2006 |
| • Award Construction Contract | October 2006 |

The project is on an accelerated schedule with the goal of breaking ground for construction in October 2006. The schedule may be revised depending on the City of Fremont's permitting and approval process. As part of the proposal, the consultant should include a schedule and implementation plan with identified resources necessary to meet the deadline.

3.0 SERVICES TO BE PROVIDED / SCOPE OF WORK

The ACCMA intends to retain a qualified professional engineering firm/team to provide design engineering and support services for the proposed Ardenwood Park and Ride Lot Project. The scope of work includes, but may not be limited to, preparation of project plans, specifications and estimates, obtaining approvals and permits, and to provide design support during construction for the proposed project. The successful firm shall demonstrate competency in all fields of expertise required by this project and continuous availability of the qualified personnel proposed to perform the services required.

The project is on an accelerated schedule, as shown in Section 2.4, and it is imperative that all deliverables are completed within scheduled timelines. Therefore, the successful proposal shall commit adequate resources to dedicate to this project, and shall include a Schedule and Implementation Plan necessary to meet the timeline.

All project services and deliverables must adhere to current City of Fremont standards and Caltrans requirements on the State system. These requirements include adherence to all applicable City and State design standards, regulations, policies and procedures at the time of project advertisement. All work must be performed and work products prepared in a format and manner customarily anticipated by the appropriate approving agency.

The scope of services to be provided for the proposed Ardenwood Park and Ride Lot Project shall be performed in two successive stages as follows:

Stage 1 – Final Design (PS&E)

Stage 2 – Design Services during Construction (DSDC)

Proposals should separately address each stage of work. The successful proposal shall demonstrate the capacity and expertise to perform structure related services should they become necessary.

3.1 Stage 1 – Final Design (PS&E)

Stage 1 shall commence immediately following receipt of a Notice to Proceed from ACCMA, and shall consist generally of the preparation of plans, specifications and estimates in accordance with current City of Fremont and Caltrans standards. The final contract plans shall include all necessary plan sheets required for the complete construction of the project and any additional plan sheets as required by City of Fremont, Caltrans and by other stakeholders/reviewing agencies/permitting agencies/utility providers. In addition, the Design Consultant shall be responsible for the preparation, submittal and approval all accompanying documents (i.e. various design reports, utility relocations, permits, agreements, reports, survey notes, slope stake notes, etc.).

The design effort will include parking lot design generally consisting of demolition, earthwork, pavement, drainage, utility verification and relocation, electrical systems (lighting, irrigation, and electrical service), signing, pavement delineation, stage construction/traffic control, material/foundation investigations, surveys, right-of-way engineering and mapping, right-of-way acquisition document preparation, lot line adjustment, permit preparation and other design features required to implement the project. Below are the tasks that are anticipated to be performed but the ACCMA reserves the rights to add or eliminate any individual tasks. The consultant should add additional tasks as necessary.

3.1.1 Project Management

- Coordinate with ACCMA project manager and staff on a day-to-day basis.
- Make presentations to City of Fremont and ACCMA.
- Attend monthly project meetings.
- Prepare monthly progress reports and earned value analysis on a quarterly basis
- Prepare agendas and meeting minutes for distribution to project roster as determined by the ACCMA.

- Communicate and coordinate with staff at various participating or affected agencies (e.g. ACCMA staff, AC Transit, City of Fremont, Caltrans, other agencies, utility providers and affected property owners).
- Prepare and maintain a current project schedule with MS-Project, including milestones through the construction phase.

Deliverables

1. Copies of presentations and/or handouts in hard copy and electronic formats.
2. Meeting agendas and records of meetings.
3. Monthly progress reports w/earned value analysis on a quarterly basis
4. Project Schedule in MS-Project format

3.1.2 Interim PS&E (65% Submittal)

Deliverables

1. 65% Plans including storm drainage, lighting, utility, landscaping and irrigation Plans
2. Tree Survey
3. Geotechnical Report
4. Hydraulics Report
5. Draft Agreements and Permits (City of Fremont, Caltrans and utility providers, etc.)
6. SWPPP, if required
7. Draft/Edited Special Provisions in Caltrans format.
8. Draft Construction Cost Estimate
9. Electronic copy of plans, design, reports, draft permits and draft agreements
10. QA/QC documentation

3.1.3 Draft Final PS&E (95% Submittal)

Deliverables

1. 95% Plans including storm drainage, lighting, utility, landscaping and irrigation Plans, Construction Details, and Erosion Control Plans
2. Draft Agreements and Permits (City of Fremont, Caltrans and utility providers, etc.)
3. SWPPP, if required
4. Fully Edited Special Provisions in Caltrans format.
5. Draft Final Construction Cost Estimate
6. Constructability Review
7. Final Agreements and Permits
8. Electronic copy of plans, design, reports, draft permits and draft agreements
9. QA/QC documentation

3.1.4 Final PS&E

Deliverables

1. Final Contract Plans
2. Final Reports, modified as necessary
3. Final Agreements and Permits
4. Final Special Provisions
5. Final Cost Estimate
6. Resident Engineer's Files and Survey Files
7. Permits, Agreements, Mitigation (PAM) Form
8. Project Files
9. Electronic copy of plans, design, reports, permits, agreements, estimates and Special Provisions.
10. QA/QC Documentation

3.1.5 Right of Way Engineering

Deliverables

- Lot Line Adjustment, as necessary
- Right-of-Way Hard Copy, as necessary
- Right-of-Way Appraisal Map, as necessary
- Right-of-Way Legal Descriptions and Deeds Packages, as necessary
- Right of Way Certification
- Project and Right-of-Way Monumentation
- Right-of-Way Record and Monumentation Maps
- Electronic copy of plans and right-of-way plans documents

3.1.6 Additional Services

- The ACCMA may wish to authorize additional services during the course of preliminary engineering to be provided by the Design Consultant. When this occurs, the ACCMA and the Design Consultant will agree on a scope of work for the additional services, including deliverables, and any adjustment(s) to the contract scope, schedule and/or compensation due to the consultant. The Design Consultant shall not proceed with any additional services until receipt of a written Notice to Proceed for the amended scope from the ACCMA.

Deliverables

- To be determined along with the scope of any additional services.

3.2 Stage 2 – Design Services during Construction (DSDC)

Stage 2 shall commence immediately following completion of the Final Design phase, and shall consist generally of providing design and engineering support during the bidding and construction phases of the project. Below are the tasks that are anticipated to be required. The consultant should add additional tasks as necessary.

3.2.1

Project Management

- Project Management
- Project Administration
- Project Scheduling
- Agency Coordination
- Attend Meetings and Reporting, as necessary
- Project Quality Assurance / Quality Control Program
- Invoicing and Progress Reports including Earned Value Analysis

Deliverables

1. Monthly progress reports w/earned value analysis on a quarterly basis
2. Meeting agendas and records of meetings.
3. Project Schedule in MS-Project format

3.2.2

Bidding Support Services

- Attend pre-bid meeting and site visit
- Respond to Bidder's Query
- Clarification of Contract Documents
- Prepare bid addendum, as necessary
- Prepare conformed drawings, as necessary
- Provide assistance to CMA's construction manager, as necessary

Deliverables

1. Bid Addendum
2. Submittal Reviews
3. Conformed Drawings

3.2.3

Construction Support Services

- Attend construction meetings and site visits, as necessary
- Review of project submittals
- Respond to RFIs
- Provide assistance to CMA's construction manager, as necessary
- Prepare Record of Survey

Deliverables

1. Submittal Reviews
2. Response to RFI
3. Record Drawings
4. Record of Survey
5. Electronic copy of Record of Survey and As-Built Plans

3.2.4

Additional Services

- The ACCMA may wish to authorize additional services during the course of final design to be provided by the Design Consultant. When this occurs, the ACCMA

and the Design Consultant will agree on a scope of work for the additional services, including deliverables, and any adjustment(s) to the contract scope, schedule and/or compensation due to the consultant. The Design Consultant shall not proceed with any additional services until receipt of a written Notice to Proceed for the amended scope from the ACCMA.

Deliverables

- To be determined along with the scope of any additional services.

The Design Consultant will be required to submit a QA/QC program to the ACCMA for review and approval. Major quality control reviews and procedures shall be identified which are specific for the project. All submittals (plans, calculations, reports and associated documents) shall include evidence of quality assurance and quality control (QA/QC) reviews.

The Design Consultant shall supplement available mapping as required for design purposes. Additional field surveys, when necessary, shall be performed by the Design Consultant to determine existing topography and establish construction survey controls for tying into existing facilities.

The Design Consultant shall coordinate project development with all concerned agencies and shall secure the required permits. The ACCMA may assist the Design Consultant in determining the need for permits from other agencies. Concerned agencies may include, but are not limited to, the following:

- Alameda County Congestion Management Agency
- Caltrans
- City of Fremont
- Alameda County Public Works Agency
- Alameda County Flood Control and Water Conservation District
- United States Army Corps of Engineers
- California Department of Fish and Game
- United States Fish and Wildlife Service
- San Francisco Bay Area Regional Water Quality Control Board
- Specific utility companies as necessary
- Other stakeholders or reviewing agencies as necessary

Project progress meetings and reporting will include meetings between ACCMA staff and the Design Consultant to be held as often as deemed necessary as well as monthly reporting on work accomplished in the previous month and the status of the project progress, project schedule, project budget and any modifications to the base construction cost estimate. Project Development Team (PDT) meetings with ACCMA and other project stakeholders will be held at approximately one-month intervals. Minutes of the meetings will be prepared by the Design Consultant and furnished to attendees within three working days of the meeting. Approval of previous PDT meeting minutes shall be the first item on each PDT agenda.

4.0 PROPOSAL SUBMITTAL REQUIREMENTS

Please prepare your proposal in accordance with the following requirements.

4.1 Proposal

The proposal (excluding resumes and the transmittal letter) shall be concise and contain only information pertinent to this project. It shall not exceed a total of the equivalent of 25 single-sided, 8.5" x 11" pages. Font size shall be at least 10 point. Resumes should be included in an appendix. The consultant is advised to review the selection criteria given in Section 5.0 of this RFP.

4.2 Transmittal Letter

The proposal shall be transmitted with a one or two page cover letter describing the firm/team's interest and commitment to the proposed project. The letter shall state that the proposal shall be valid for a 90-day period and should include the name, title, address and telephone number of the individual to whom correspondence and other contacts should be directed during the consultant selection process. It shall also state specifically objection to any terms of the sample ACCMA contract. The person authorized by the firm/team to negotiate a contract with ACCMA shall sign the cover letter.

Address the cover letter as follows:

Stefan Garcia, P.E.
Principal Transportation Engineer
Alameda County Congestion Management Agency
1333 Broadway, Suite 220
Oakland, CA 94612

4.3 Project Understanding

This section should clearly convey a clear understanding of the nature of the work, including coordination with and approvals from ACCMA and any other affected agency.

4.4 Approach and Management Plan

This section should provide the firm's/team's proposed approach and management plan for providing services. Include an organization chart showing the proposed relationships among consultant staff and ACCMA staff, as well as any other parties that may have a significant role in the delivery of this project. Proposals should separately address each stage of work.

4.5 Qualifications and Experience

The proposal should provide the qualifications and experience of the consultant team that will be available for this project. Please emphasize the specific qualifications and experience from projects similar to this project for the key team members. Key team members are expected to be committed for the duration of the project. Replacement of any key team member will not be permitted without prior consultation with, and approval of, the ACCMA.

4.6 Staffing Plan

The proposal should provide a staffing plan (by quarter) and an estimate of the **total hours** (detailed by position) required to complete the scope of work included in each stage of Section 2 above, as well as a summary of the hours by tasks and the overall project. Discuss the workload, both current and anticipated, for all key team members, and their capacity to perform the requested services according to your proposed schedule. Discuss the firm/team's approach for completing the services required for this project within budget, and to meet the completion deadlines. Proposals should separately address each stage of work.

4.7 Work Plan and Schedule

This section should include a description of how each task of the project will be conducted, identification of deliverables for each task and subtask, as well as an implementation schedule. The work plan should include sufficient detail to demonstrate a clear understanding of the project. Discuss the firm/team's approach for completing the project (as well as providing other design support services that may be requested for this project). Proposals should separately address each stage of work.

The schedule or schedules should support the preliminary schedule discussed in Section 2.4 above.

4.8 Additional Relevant Information

Provide additional relevant information that may be helpful in the selection process (not to exceed the equivalent of 2 single-sided pages).

4.9 References

For each key team member, provide at least three references (names and current phone numbers) from recent work (previous three years) similar or relevant to this project. Include a brief description of each project associated with the reference, and the role of the respective team member.

4.10 Submittal of Proposals

Ten (10) copies of your proposal are due at the ACCMA offices no later than the time and date specified in Section 6.0, below. Envelopes or packages containing the proposals should be clearly marked, "**Ardenwood Park-and-Ride Lot Design Services Proposals Enclosed**".

5.0 SELECTION OF CONSULTANT

The overall process will be to evaluate the technical components of all the proposals completely and independently. The proposals will be evaluated based on the following criteria:

1. Qualifications and specific experience of key team members.
2. Project understanding and approach, including an understanding of ACCMA, and other agency review, approval and coordination processes.
3. Experience with similar types of projects including planning and entitlement process.
4. Satisfaction of previous clients.
5. Schedule and capacity to provide qualified personnel.
6. Design to cost experience.
7. Ability to manage budget and complete project in a cost effective manner.

Two or more of the firms/teams may be invited for interviews. The project manager and key team members should attend the interview. The evaluation/interview panel may include representatives from ACCMA, and other agencies, but the specific composition of the panel will not be revealed prior to the interviews. Costs for travel expenses and proposal preparation shall be borne by the consultants.

Once the top firm/team has been determined, ACCMA staff will start contract negotiations with firm/team. If contract negotiations are not successful, the second ranked firm/team may be asked to negotiate a contract with ACCMA, and so on. Provided negotiations are proceeding well, ACCMA may elect to initiate a portion of the work scope with a Notice to Proceed (NTP), prior to execution of the contract.

6.0 SELECTION PROCESS SCHEDULE

<i>Date</i>	<i>Time</i>	<i>Activity</i>
January 10, 2006	1:00 PM	Pre-proposal meeting at ACCMA.
February 6, 2006	3:00 PM	Proposals due at: Alameda County Congestion Management Agency 1333 Broadway, Suite 220 Oakland, CA 94612 <i>Late submittals will not be accepted. Faxed or E-mailed submittals will not be accepted.</i>
February 21, 2006	9:00 AM – 4:00 PM	Tentative date for consultant selection interviews.

If you have any questions regarding this RFP, please contact:

Stefan Garcia, P.E.
Principal Transportation Engineer, ACCMA
Phone (510) 836-2560
Fax (510) 836-2185
sgarcia@accma.ca.gov

7.0 GENERAL CONDITIONS

A. Limitations

This RFP does not commit the Alameda County CMA to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.

B. Rejection of Proposals

The Alameda County CMA reserves the right to reject any or all proposals.

C. Award

All finalists may be required to participate in negotiations and to submit such price; technical or other revisions of their proposals as may result from negotiations. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and technical viewpoint.

D. Work Scope Modifications

The Alameda County CMA reserves the right to request changes to the staffing, team makeup and/or scope of services contained in any of the proposals and to enter into negotiations with any of the proposing firms regarding their submittal.

E. Contract

A sample contract is shown in Attachment A. It is expected that the terms of the contract will be acceptable to the consultant.

F. Non - Discrimination

Contractors shall not discriminate on the basis of race, color, national origin, sex, or physical disability in the performance of ACCMA contracts.

G. SBE and LBE Requirements

CMA has adopted a Small Business Enterprise (SBE) Policy, pursuant to which the CMA encourages all prime contractors to utilize qualified SBE subcontractors on CMA projects, CMA promotes the direct purchase of goods from qualified SBEs by utilizing SBE vendors when such vendors are available and the price of the goods sought is reasonable, and, for professional services contracts, CMA seeks the utilization of qualified SBEs when such SBEs are available. All prime contractors are required to report on SBE usage during the term of each contract, using a form

provided by CMA.

For purposes of CMA's SBE Policy, an SBE shall be a "small business" within the meaning of 13 CFR Part 121 and California Government Code Section 14837. In the event that the CMA's SBE Policy conflicts with any Federal, State or other funding source's programs, policies, regulations or requirements, CMA shall make the SBE Policy consistent with said funding source's programs, policies, regulations and requirements to the extent permissible by law. CMA's SBE Policy is neutral as to race, ethnicity, national origin, age, sex, religion, sexual orientation and other protected classes.

CMA has also adopted a Local Business Enterprise (LBE) Policy, pursuant to which the CMA encourages all prime contractors to utilize qualified LBE subcontractors on CMA projects, CMA promotes the direct purchase of goods from qualified LBEs by utilizing LBE vendors when such vendors are available and the price of the goods sought is reasonable, and, for professional services contracts, CMA seeks the utilization of qualified LBEs when such LBEs are available. All prime contractors are required to report on LBE usage during the term of each contract, using a form provided by CMA.

H. Levine Act

Selected consultants will be required to disclose on the record any contribution of more than \$250.00 which they have made to an ACCMA Board member within the twelve-month period preceding the submittal deadline of this RFP. This applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation, which is part of your team. If you have made a contribution which needs to be disclosed you must provide written notice of the date, amount and receipt of the contribution(s) to ACCMA's Executive Director, Dennis Fay. This information will need to be provided before the ACCMA can approve any contract.

8.0 ATTACHMENTS

The following documentation is attached:

8.1 Attachment A – Sample Contract

8.2 Attachment B – Project Exhibit

8.3 Attachment C – List of Firms That Received This RFP

***Note** – this introductory paragraph and each instance of bracketed text [like this] throughout this document should be reviewed prior to distribution to CMA Counsel and/or the Consultant. Each bracket represents a location where a choice needs to be made. (i) Irrelevant text and surrounding brackets should be deleted; (ii) placeholder text and surrounding brackets should be replaced with real language, and (iii) brackets surrounding relevant material should be deleted without affecting the text.*

AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

This AGREEMENT is made and entered into as of the latest date appearing on the signature page below, by and between the ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY, a joint powers agency (“CMA”) and _____, [a _____ (state) _____ corporation] [a _____ (state) _____ partnership] [a _____ (state) _____ limited liability company] [a sole proprietorship], with a place of business at _____, _____ (City) _____, CA (“CONSULTANT”).

RECITALS

WHEREAS, CMA has defined and developed the _____

[describe
project] (“PROJECT”);

WHEREAS, CMA desires to secure [professional services / describe] necessary for said PROJECT; and

WHEREAS, CONSULTANT represents that it possesses the professional qualifications and expertise to provide such services;

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

CMA hereby contracts with CONSULTANT and CONSULTANT hereby accepts such contract to perform the services upon the terms and subject to the conditions and in consideration of the

payments set forth in this AGREEMENT. CONSULTANT promises, covenants and agrees to diligently pursue the work to completion in accordance with the schedule and under the terms and conditions set forth herein.

ARTICLE I

A. GENERAL.

1. The PROJECT. The PROJECT which is the subject of this AGREEMENT is more particularly described in **Appendix A**, “Detailed Scope of Work,” attached hereto and by this reference incorporated herein.

2. Scope of Services. Except as may be specified elsewhere in the AGREEMENT, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the work in **Appendix A**, as further defined in **Appendix D**, “Project Cost Proposal,” attached hereto and by this reference incorporated herein.

3. Term. The term of the AGREEMENT shall be from the date of Notice to Proceed with the services until the completion of the PROJECT pursuant to the Schedule of Work, to the satisfaction of CMA as evidenced by the Notice of Final Acceptance unless terminated earlier pursuant to **Article I, Section B**, below.

4. Compensation.

a. Compensation by CMA to CONSULTANT will be on the cost basis set forth in **Appendix D**.

b. Total compensation for services to be performed under this AGREEMENT will not exceed \$ _____, including Direct Expenses but excluding taxes, and CONSULTANT shall not be obligated to perform additional services beyond the scope of this AGREEMENT or incur costs which would cause this amount to be exceeded, unless and until the AGREEMENT has been formally amended in writing.

c. The aggregate amount was computed based on **Appendices A and D**.

5. CMA's Representative. CMA hereby designates its Executive Director to be its representative in administering all matters relative to the AGREEMENT. CMA's Representative may delegate authority for specific matters to other staff members or other consultants.

6. CONSULTANT's Representative. CONSULTANT hereby designates _____ to represent CONSULTANT with full authority under the AGREEMENT.

7. CONSULTANT's Identity and Personnel. _____ will be the key person for the performance of services under this AGREEMENT.

CONSULTANT is the prime consultant heading a team that includes multiple subconsultant firms. The identity of the firms, their respective areas of responsibility and the key personnel who will work on the PROJECT are identified on **Appendix B**, "Key Project Personnel," attached hereto and by this reference incorporated herein. Any significant change in responsibilities among such firms, any addition or deletion of a firm (whether working as a joint venture partner or subconsultant), and any change in key personnel may be made only upon prior written approval by CMA.

CONSULTANT and its subconsultants shall notify CMA of any proposed change of ownership or fundamental structure, respectively, in CONSULTANT's firm or any subconsultants' firm. Within 30 days of such notice, CMA shall notify CONSULTANT whether CMA will approve such changed firm to continue providing services under this AGREEMENT or whether CMA will terminate this AGREEMENT or require a substitution of a subconsultant firm. Nothing in this provision shall be construed to limit CMA's right to terminate this AGREEMENT for cause or without cause as set forth in **Article I, Section B** of this AGREEMENT.

Subcontracts between CONSULTANT and other team member firms and between team member firms and other lower tier subconsultants will be subject to review and approval of CMA's representative.

8. Preliminary Review of Work. Where CONSULTANT is required to prepare and submit reports, working papers, etc. to CMA as products of the work described in the Scope of Work, these shall be submitted in draft form, and CMA shall have the opportunity to direct revisions prior to formal submission by CONSULTANT.

9. Appearance at Hearings. If and when required by CMA, CONSULTANT shall render assistance at public meetings and hearings to perform its services under the AGREEMENT as may be deemed necessary by CMA.

10. Responsibility of CONSULTANT. CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under the AGREEMENT. Neither CMA's review, acceptance, nor payment for any of the services required under the AGREEMENT shall be construed to operate as a waiver of any rights under the AGREEMENT or of any cause of action arising out of the performance of the AGREEMENT, and CONSULTANT shall be and remain liable to CMA in accordance with applicable law for all damages to CMA caused by CONSULTANT's negligent performance of any of the services furnished under the AGREEMENT.

11. Inspection of Work. It is understood that authorized representatives of CMA may inspect or review CONSULTANT's work in progress at any reasonable time.

12. Suspension, Delay or Interruption of Work. CMA may suspend, delay, or interrupt the services of CONSULTANT for the convenience of CMA. In the event of such suspension, delay, or interruption by CMA or of Excusable Delays as defined in **Article II, Section C**, equitable adjustment will be made in the PROJECT schedule, commitment and cost of CONSULTANT's personnel and subconsultants, and CONSULTANT's compensation.

13. No Third Party Beneficiaries. This AGREEMENT gives no rights or benefits to anyone other than CMA and CONSULTANT and has no third-party beneficiaries.

14. Legal Action. All legal actions by either party against the other arising from this AGREEMENT, or for the failure to perform in accordance with the applicable standard of care, or any other cause of action, will be subject to the statutes of limitation of the State of California.

15. Survival of Indemnities. Notwithstanding the termination of this AGREEMENT and/or the breach of contract or warranty, fault, tort (including but not limited to torts based on negligence, statute or strict liability), CONSULTANT's obligations of indemnity set forth in **Article I, Section F** and any releases, limitations on indemnity, and any and all limitations on any remedies herein shall survive termination of this AGREEMENT for any cause, and **Article I, Section A, paragraph 10** and **Article I, Section F** of this AGREEMENT shall take precedence

over any conflicting provision of this AGREEMENT or any document incorporated into it or referenced by it.

16. Jurisdiction. The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

17. Severability and Survival. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. Arbitration. All claims, counterclaims, disputes, and other matters in question arising out of, or relating to, this AGREEMENT or the breach thereof shall be resolved by final, binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the date of execution of this AGREEMENT, except that the parties may mutually agree to a different alternative dispute resolution mechanism by jointly executing an agreement in writing describing such alternative mechanism. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. If either party refuses or fails to participate in naming an arbitrator or in the arbitration itself, the arbitrator named by the American Arbitration Association or the other party is hereby authorized to decide the dispute based upon the information presented to him/her. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding hereunder. In any arbitration proceeding hereunder, any arbitrator shall have substantial training and professional experience in the subject matter of the arbitration, but shall not have been employed by a party for at least five (5) years prior to the arbitration proceeding. No person shall be chosen as an arbitrator who has at any time been an employee or consultant of either party. All arbitration hearings shall be held at a mutually agreeable time and location within the City of Oakland, California, unless otherwise agreed by the parties. The decision of the arbitrator shall be final, conclusive and binding on the parties, absent fraud or gross error. The decision of the arbitrator may be entered as a judgment in a court of competent jurisdiction. The parties shall each be responsible for one-half of the

arbitrator's fees and expenses. Any attorney-client privilege and other protections against disclosure of confidential information, including any protection afforded by the work product privilege for attorneys that could otherwise be claimed by a party shall be available to and may be claimed by such party in any arbitration proceeding hereunder. Neither party waives any attorney-client privilege or any other privilege against disclosure of confidential information by reason of anything contained in or done pursuant to or in connection with this **paragraph 18**. All arbitration proceedings hereunder may be reported by a certified shorthand court reporter.

19. Attorneys' Fees. Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party as determined by a court or an arbitrator shall be entitled to recover reasonable expenses and attorneys' fees from the other party.

20. Final Acceptance. When CMA determines in its reasonable discretion that CONSULTANT has satisfactorily completed the Scope of Services, CMA shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination when, in its opinion, it has satisfactorily completed the Scope of Services, and if so requested, CMA shall make this determination within three weeks of such request.

21. Subcontracts. Subcontracts between CONSULTANT and other team firms and between team members firm and other lower tier subconsultants will be subject to review and approval of CMA's representative. Any such subcontracts in excess of \$25,000.00 shall contain all provisions stipulated in this AGREEMENT as applicable to subconsultants.

22. Completion of Services. The services described in the Scope of Work shall be completed on or before _____, unless such date is extended by mutual agreement of the parties.

B. TERMINATION/CANCELLATION.

1. For Convenience. CMA may terminate this AGREEMENT. If CMA terminates the AGREEMENT for the convenience of CMA, CMA shall give CONSULTANT seven (7) days prior written notice. CONSULTANT shall be paid for services performed to the date of termination, to include a pro-rated amount of profits, if applicable, but no amount shall be allowed for anticipated profit on unperformed services. In addition to payment for services performed, CMA shall pay CONSULTANT the allowable costs incurred prior to termination, and

other costs reasonably incurred by CONSULTANT to implement the termination, such as, but not limited to, subcontract termination costs and related closeout costs, if any.

2. For Cause. If CONSULTANT fails to fulfill its obligations under this AGREEMENT and CMA decides to terminate this AGREEMENT accordingly, CMA shall give CONSULTANT seven (7) days prior written notice of its intent to terminate the AGREEMENT for cause. If, at the end of the seven (7) day notice, CONSULTANT has not commenced correction of its performance, CMA may immediately thereafter exercise its right of termination.

3. Damages/Compensation. If the termination is due to the failure of CONSULTANT to fulfill its obligations under the AGREEMENT, CONSULTANT will be compensated for that portion of the work which has been completed and accepted by CMA, and for services performed to the date of termination, including a prorated amount of profit, if applicable, but no allowance for anticipated profit on unperformed services. In such case, CMA may take over the work and prosecute the same to completion by contract or otherwise, and CONSULTANT shall be liable to CMA for reasonable costs incurred by CMA in making necessary arrangements for completion of the work by others.

4. Adjustments. If, after notice of termination for failure to perform, it is determined by CMA that CONSULTANT had not so failed and CMA nonetheless desires to terminate the AGREEMENT, the termination shall be deemed to have been effected for the convenience of CMA. In such event, adjustment shall be made as provided in **Article I, Section B, paragraph 1.**

5. Rights and Remedies. The rights and remedies of the parties provided in this Section are cumulative and not exclusive, and are in addition to any and all other rights and remedies provided by law or other sections of this AGREEMENT.

6. Waivers. CONSULTANT, by executing the AGREEMENT, shall be deemed to have waived any and all claims for damages in the event of CMA's termination for convenience as provided in **Article I, Section B, paragraph 1**, except for justifiable costs of termination, including, but not limited to, subcontract termination costs as mutually agreed by CMA and CONSULTANT.

C. REVISIONS IN SCOPE OF SERVICES.

1. Change Order. CMA's representative may make changes in or additions to the Scope of Services under the AGREEMENT if such changes are agreed to by CONSULTANT, which agreement shall not be unreasonably withheld, through a written Change Order which does not modify the overall purpose, term or compensation provisions of the AGREEMENT. No changes in the Scope of Work shall cause an increase in cost to CMA unless the change is approved in advance by a written Change Order.

2. Extra Work. At any time during the term of the AGREEMENT, CMA may order extra work to be performed by CONSULTANT. Extra work is defined as work which was not anticipated and/or contained in the AGREEMENT and which is determined by CMA to be necessary for the PROJECT. Necessary changes in the description of the Scope of Services, equitable adjustments in allowable costs, fixed fee, maximum price, term and schedule required by the Extra Work Order shall be agreed upon by the parties and incorporated herein through the execution of a written amendment to this AGREEMENT. CONSULTANT shall not perform any work or incur any costs pursuant to any Extra Work Order without prior approval by CMA. CONSULTANT's compensation shall be adjusted due to an Extra Work Order only if it has an impact on costs or terms of the AGREEMENT.

D. OWNERSHIP OF MATERIALS/CONFIDENTIALITY.

1. Documents. Except as noted below, deliverables prepared by CONSULTANT under the AGREEMENT, such as plans, drawings, tracings, quantities, specifications, proposals, sketches, diagrams and calculations, relative to the AGREEMENT shall become the property of CMA upon completion of the term of this AGREEMENT whether or not the PROJECT is completed. CMA shall not be limited in any way in its use thereof at any time during or after the term of this AGREEMENT, provided that any such use not within the purposes of the AGREEMENT shall be at the sole risk of CMA, and provided that CMA shall indemnify CONSULTANT against any damages resulting from such use, including the release of this material to third parties for use not intended in the AGREEMENT, and for deliverables that have been changed without CONSULTANT's written approval. All documents shall be provided in both written and electronic format.

2. Confidentiality. All ideas, memoranda, specifications, plans, manufacturing procedures, drawings, descriptions, and all other written information submitted to CONSULTANT

by or on behalf of CMA in connection with the performance of the AGREEMENT shall be held confidential by CONSULTANT and shall not, without the prior written consent of CMA, be used for any purposes other than the performance of the services under this AGREEMENT. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or becomes generally known to the related industry, shall be deemed confidential. CONSULTANT shall not use CMA's name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other news medium without the express written consent of CMA. CONSULTANT may use project technical information at will in the demonstration of expertise for purposes of describing project experience to others in the routine conduct of CONSULTANT's business with CMA's prior written consent.

E. CONSULTANT STATUS/SUBCONSULTANTS.

1. Consultant. In the performance of the services to be provided hereunder, CONSULTANT is an independent consultant and is not an employee, agent or other representative of CMA.

2. Assignment or Transfer. Services to be furnished hereunder shall be deemed to be professional services and, except as herein provided, CONSULTANT has neither the right nor the power to assign, sublet, transfer or otherwise substitute its interest in the AGREEMENT or its obligations hereunder without the prior written consent of CMA.

F. INDEMNIFICATION.

1. Duties. CONSULTANT represents and maintains that it is skilled in the technical practices necessary to perform the services, its duties and obligations, expressed and implied, contained herein, and CMA expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform all services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

2. Responsibilities. CONSULTANT agrees to defend, protect, indemnify and hold harmless CMA, its officers and employees, from and against any and all liability, claims, suits, loss, damages, costs and expenses (collectively "Claims") to the extent arising out of or resulting from any negligent acts, errors or omissions of CONSULTANT, and its officers, employees, agents or subconsultants in the performance of their services under the AGREEMENT. In the event CMA

is found by a court or arbitrator to be partially liable for a Claim, CMA shall reimburse CONSULTANT for its proportionate share of the reasonable costs of defense actually expended, based on its share of liability.

CMA shall provide CONSULTANT an opportunity to cure, at CONSULTANT's expense, all errors and omissions, which may be disclosed during the review of the services performed by CONSULTANT. Should CONSULTANT fail to make such corrections in a timely manner, such corrections shall be made by CMA and CONSULTANT shall pay all costs thereof.

It shall be the responsibility of CONSULTANT to provide the basic insurance requirements indicated in **Section G**, below.

G. INSURANCE.

1. Comprehensive Liability. CONSULTANT shall carry Commercial or Comprehensive General Liability Insurance and maintain aggregate limits of liability sufficient cover not less than \$1,000,000.00 per occurrence for bodily injury and \$500,000.00 per occurrence for Property Damage and Automobile Liability Insurance with limits not less than \$250,000.00 per person and \$500,000.00 per occurrence for property damage. Maintenance of said insurance shall extend throughout the entire term of this AGREEMENT. Such insurance shall add CMA, its officers, employees, agents, and, if applicable other permitting agencies as identified by CMA, while acting within the scope of this AGREEMENT, as additional insureds. Such insurance shall include the following:

- a.** All operations including use of all vehicles.
- b.** Blanket contractual liability on all written contracts, including this AGREEMENT.
- c.** Personal injury (in lieu of, or in addition to, bodily injury).
- d.** Use of watercraft, where applicable.

Subconsultants of CONSULTANT shall provide evidence of their own Commercial or Comprehensive General Liability Insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts, is unable to meet the insurance specifications provided in this **Section G, paragraph 1**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to waive or modify any of the insurance specification requirements for such subconsultant.

2. Errors and Omissions. In addition to the requirements of **Article I, Section G, paragraph 1** above, CONSULTANT shall carry professional liability insurance for errors and omissions in an amount not less than \$1,000,000. Such insurance shall include the following:

a. A deductible or self-insured retention is permissible on this policy, providing that such deductible or self-insured retention shall not exceed \$50,000 per occurrence.

b. Said policy shall include a contractual liability endorsement on all written contracts, including this AGREEMENT.

c. Subconsultants of CONSULTANT providing services of a professional nature, shall provide evidence of their own professional liability insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts is unable to meet the professional liability insurance requirements provided in this **Section G, paragraph 2**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to modify the professional liability requirements for such subconsultant.

3. Worker's Compensation. CONSULTANT shall carry Worker's Compensation Insurance as required by California Law, covering all work performed by CONSULTANT under the AGREEMENT, and all of CONSULTANT's personnel performing services under the AGREEMENT.

4. Certificates. Insurance certificates evidencing the policies described in this **Article I, Section G** are to be furnished to CMA and provide for not less than sixty (60) days prior written notice to CMA of any cancellation.

H. PROHIBITED INTEREST.

1. Solicitation. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit

or secure the AGREEMENT and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making the AGREEMENT. For breach of violation of this warranty, CMA shall have the right to rescind the AGREEMENT without liability.

2. Conflict of Interest. CONSULTANT agrees that, for the term of this AGREEMENT, no member, officer or employee of CMA, during his/her tenure or for one (1) year thereafter, or member or delegate to the Congress of the United States, shall have any direct interest in the AGREEMENT or any direct or material benefit arising therefrom.

3. Conflict of Employment. Employment by CONSULTANT of any current officer, executive director or other employee of CMA shall not be permitted even though such employment may be outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, for a period of one year after leaving office or employment, no officer, executive director or other employee of CMA shall, for compensation, act as agent or attorney or otherwise represent CONSULTANT by making any formal or informal appearance by making any oral or written communication before CMA, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, entitlement or contract, or the sale or purchase of goods, services or property.

I. AFFIRMATIVE ACTION, DISADVANTAGED BUSINESS ENTERPRISE PROGRAM, SMALL BUSINESS ENTERPRISE POLICY AND LOCAL BUSINESS ENTERPRISE POLICY.

1. In connection with the execution of the AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination.

2. To the extent applicable, CONSULTANT will comply with CMA's Disadvantaged Business Enterprise (DBE) Program.

3. Pursuant to CMA's Small Business Enterprise (SBE) Policy, CONSULTANT is encouraged to utilize qualified SBE subcontractors to perform a portion of the work described in **Appendix A**, and CONSULTANT shall report on SBE usage during the term of this AGREEMENT using the SBE Participation Report Form included in **Appendix E**, "SBE And LBE Participation Report Forms," attached hereto and by this reference incorporated herein. CONSULTANT shall submit such a report promptly upon the completion of the PROJECT. If the term of this AGREEMENT is greater than one year, CONSULTANT shall also submit such reports annually on each anniversary of the date of this AGREEMENT.

4. Pursuant to CMA's Local Business Enterprise (LBE) Policy, CONSULTANT is encouraged to utilize qualified LBE subcontractors to perform a portion of the work described in **Appendix A**, and CONSULTANT shall report on LBE usage during the term of this AGREEMENT using the LBE Participation Report Form included in **Appendix E**. CONSULTANT shall submit such a report promptly upon the completion of the PROJECT. If the term of this AGREEMENT is greater than one year, CONSULTANT shall also submit such reports annually on each anniversary of the date of this AGREEMENT.

J. NOTIFICATION.

All notices hereunder and communications regarding interpretation of the terms of the AGREEMENT or changes thereto shall be effected by the mailing thereof by registered or certified mail, postage prepaid and addressed as follows:

CONSULTANT:

ATTN: (name)
(address)
(city), CA (zip)

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

ATTN: Dennis Fay
Executive Director
1333 Broadway, Suite 220
Oakland, CA 94612-1918

K. AUDIT OF BOOKS AND RECORDS.

CONSULTANT shall make available to CMA, its authorized agents (including but not limited to representatives of the state and federal governments), officers and employees, for examination, any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to CMA, and shall furnish to CMA, its agents, and employees, such other evidence or information as CMA may require with respect to any such expense or disbursement charged by CONSULTANT.

The records described in this Section shall be retained by CONSULTANT and made available for inspection by CMA for a period of three (3) years after this AGREEMENT is terminated, or the date of the final payment, whichever is later. The audit to determine final compensation will be accomplished by CMA within one year after completion of the PROJECT.

L. ENTIRE AGREEMENT.

This AGREEMENT constitutes the entire agreement between the parties hereto relating to the PROJECT and supersedes any previous agreement or understanding.

ARTICLE II - SCHEDULE

A. SCHEDULE OF WORK.

CONSULTANT shall conform with the schedule set forth in **Appendix C**, "Milestone Schedule," attached hereto and by this reference incorporated herein, except as otherwise modified by the AGREEMENT. In the event it becomes necessary to modify the Schedule of Work, CONSULTANT will prepare a revised schedule for review and approval by CMA. When a revised schedule has been submitted to and approved by CMA, it will be substituted for **Appendix C** and will become a part of this AGREEMENT. CONSULTANT is responsible for reporting in a prompt and timely manner whenever it appears the established work schedule will not be met, whether or not the reasons for anticipated delay are within CONSULTANT's control.

B. REPORTING.

Monthly progress reports in a form acceptable to CMA, which describe work accomplished, shall be submitted with CONSULTANT's monthly billings. CMA agrees to respond to CONSULTANT's draft report submissions in accordance with the Schedule of Work.

C. DELAY.

Neither party hereto shall be considered in the default in the performance of its duties and obligations under this AGREEMENT with respect to the “Milestone Schedule”, to the extent that the performance of any obligation is prevented or delayed by an Excusable Delay as defined herein. Should CONSULTANT’s services be delayed by any mutually agreed upon excusable cause, CONSULTANT’s schedule for completion of tasks affected by such delay shall be extended as agreed to by CMA. CONSULTANT shall take all reasonable actions to minimize any schedule extensions or additional costs to CMA resulting from such delay. Excusable Delays may include, but are not limited to, acts of God or of the public enemy, acts or failures to act of other agencies or CMA (in either their sovereign or contractual capacity), embargoes, and unusually severe weather. In every case, the failure to perform must be reasonably beyond the control and without the fault or negligence of CONSULTANT.

D. NOTICE OF POTENTIAL DELAY.

As a condition precedent to the approval of an extension of time to complete the established work schedule, CONSULTANT shall give written notice to CMA within seven (7) working days after CONSULTANT knows or should know of any cause or condition which might, under reasonably foreseeable circumstances, result in delay for which CONSULTANT may claim an extension of time.

ARTICLE III – COMPENSATION/PAYMENT

A. INVOICES AND TIME OF PAYMENT.

1. For all services described in **Article I** and **Appendix A**, payment is due within thirty (30) days after receipt of billing of the amount due for all services rendered during the month, except as otherwise provided in this **Section A**. Payment for service will represent the value of the completed scope of work as measured by expended costs to date.

2. CMA shall withhold ten percent (10%) of each progress payment referred to in **paragraph 1** above. *[Delete this paragraph if not applicable to this contract]*

3. If CMA disputes any portion of the amount due to CONSULTANT, it may, at its sole discretion, withhold payment up to 150% of the disputed amount pending resolution of the dispute. If any amount is wrongfully withheld or not paid to CONSULTANT on a timely basis,

CMA shall pay to CONSULTANT 1.5% per month for the improperly withheld amount for each month which payment is wrongfully withheld or not paid. In any action for the collection of amount withheld in violation of this provision, the prevailing party shall be entitled to reasonable attorney's fees and costs.

4. CONSULTANT agrees that within twenty (20) days of receipt of payment from CMA, CONSULTANT shall pay to its subconsultants all amounts due from such payment, subject to such legal requirements under federal or state law regarding withholding of disputed payments and applicable penalties.

5. The format of payment invoices shall be as mutually agreed upon by CONSULTANT and CMA.

6. CMA may, on occasion, request reasonable documentation for certain expense items. In such instances, payment for all other amounts in the invoice for which additional documentation is not required will be made.

7. Upon CMA's Final Acceptance pursuant to **Article I, Section A, paragraph 20**, CONSULTANT shall submit a final invoice to CMA and request final retention payment. CMA shall make final retention payment to CONSULTANT within 45 days of receipt of billing of the amount due. Final Payment shall be subject to the provisions of **paragraphs 1 and 3** above with regard to CMA's right to withhold disputed payments, CONSULTANT's rights to 1.5% payment on wrongfully withheld or untimely payment, any prevailing party's reasonable legal fees and costs and payments to subconsultants.

8. CONSULTANT agrees that the cost principles set forth in Title 48 CFR, Chapter 1, Part 31 (Cost Principles and Procedures) shall be used to determine the allowability of individual cost items, except that travel and subsistence costs will be reimbursed in accordance with California Department of Personnel Administration guidelines for non-exempt State employees. Any costs for which payments have been made to CONSULTANT which are determined by subsequent audit to be unallowable under these cost principles and guidelines are subject to repayment by CONSULTANT to CMA.

9. CONSULTANT agrees to comply with federal procedures in accordance with Title 49 CFR, Part 18 (Uniform Administrative Requirements for Grants and Agreements with States and Local Governments).

10. If any subconsultant provides services pursuant to this AGREEMENT, the agreement with said subconsultant shall contain a clause to the effect that the provisions of **paragraphs 8 and 9** above shall apply to said subconsultant.

B. SUSPENSION OF WORK.

In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, CONSULTANT may, after giving fifteen (15) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. Upon receipt of payment in full for services rendered, CONSULTANT will continue with all authorized services. Payment of all compensation due CONSULTANT pursuant to this AGREEMENT shall be a condition precedent to CMA's use of any of CONSULTANT's professional service work products furnished under this AGREEMENT.

ARTICLE IV - OBLIGATIONS OF CONSULTANT

A. AUTHORIZATION TO PROCEED.

CONSULTANT will not begin work on any of the services described in **Article I** until CMA directs it in writing to proceed.

ARTICLE V – OBLIGATIONS OF CMA

A. CMA-FURNISHED DATA.

CMA will provide to CONSULTANT all relevant technical data in CMA's possession, including, but not limited to, previous reports, maps, surveys, borings, and all other information relating to CONSULTANT's services on the PROJECT. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by CMA.

B. ACCESS TO FACILITIES.

CMA will make its facilities reasonably accessible to CONSULTANT as required for CONSULTANT's performance of its service.

C. TIMELY REVIEW.

CMA will examine the studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as CMA deems appropriate; and render, in writing, decisions required of CMA in a timely manner.

D. PROMPT NOTICE.

CMA will give prompt written notice to CONSULTANT whenever CMA observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect in the work of CONSULTANT or its subconsultants.

ARTICLE VI - APPENDICES, SCHEDULES AND SIGNATURES

This AGREEMENT, including its Appendices, constitutes the entire agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

The following Appendices are hereby made a part of this AGREEMENT:

Appendix A: DETAILED SCOPE OF WORK

Appendix B: CONSULTANT AND SUBCONSULTANT FIRMS KEY PROJECT
PERSONNEL

Appendix C: MILESTONE SCHEDULE

Appendix D: PROJECT COST PROPOSAL

Appendix E: SBE AND LBE PARTICIPATION REPORT FORMS

IN WITNESS WHEREOF, CMA has by order caused the AGREEMENT to be subscribed by the binding authority of CMA and CONSULTANT has caused the AGREEMENT to be subscribed on its behalf by duly authorized signees.

CONSULTANT:

By: _____
Name: _____
Its: _____

Date: _____

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

By: _____
Dennis Fay, Executive Director

Date: _____

Recommended For Approval

By: _____
Name / Title

Approved as to form and legality:

Wendel, Rosen, Black & Dean LLP
Legal Counsel to CMA

APPENDIX A
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

DETAILED SCOPE OF WORK

APPENDIX B
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

CONSULTANT AND SUBCONSULTANT
FIRMS KEY PROJECT PERSONNEL

APPENDIX C
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

MILESTONE SCHEDULE

APPENDIX D
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

PROJECT COST PROPOSAL

APPENDIX E
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

SBE AND LBE PARTICIPATION REPORT FORMS

**ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
SBE PARTICIPATION REPORT**

(Submit Annually and upon Completion of Project)

Consultant _____

Name of Project _____

Contract Amount _____

Name, Address and Phone Number of Each SBE Firm Participating on this Project (Source of SBE Certification, if available)		SBE Project Participation (to date)		Nature of Participation
		Dollar Value	Percent	
1.				
2.				
3.				
4.				

**ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
LBE PARTICIPATION REPORT**

(Submit Annually and upon Completion of Project)

Consultant _____

Name of Project _____

Contract Amount _____

Name, Address and Phone Number of Each LBE Firm Participating on this Project (Source of LBE Certification, if available)		LBE Project Participation (to date)		Nature of Participation
		Dollar Value	Percent	
1.				
2.				
3.				
4.				

Drawing: P:\02005 AlaCoCongManagmtAgcy_2002\RM2\Ardenwood\Sheets\layout-bind-complete.dwg
Layout: Layout1
Dec 19, 2005, 4:39pm



PRELIMINARY DRAWING
NOT FOR CONSTRUCTION

PARKING STALL COUNT

	EXISTING	PROPOSED
HANDICAPPED VAN	1	1
HANDICAPPED CAR	3	6
CARS	109	220
TOTAL	113	227

R.O.W. ACQUISITION

FEE TAKE	43,483 SF
ACCESS EASEMENT 1	14,552 SF
ACCESS EASEMENT 2	578 SF
TOTAL	58,613 SF

NO.	DATE	REVISION

TYLIN INTERNATIONAL | CCS
1440 BROADWAY, SUITE 402, OAKLAND, CA 94612
PHONE: (510) 267-1800 FAX: (510) 267-1807

DRAWN
B. CLARK
CHECKED
F. LO
APPROVED
ENGINEER
DATE

DESIGNED
B. CLARK
DATE CHECKED

HORIZONTAL SCALE:
1:40
VERTICAL SCALE:

CONTRACT NO.

**ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY**



**REGIONAL MEASURE 2
ARDENWOOD PARK-AND-RIDE LOT
PRELIMINARY LAYOUT SCHEME 5**

JOB NO.

DATE
NOV 8, 2005

SHEET

PL-5

SHEET NO.

TOTAL SHEETS

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